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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THE BARTHEL COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 81-173

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a \$250 civil penalty for emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I related to opacity, came on for hearing before the Pollution Control Hearings Board, David Akana and Gayle Rothrock, Members, convened at Lacey, Washington, on March 29, 1982. Administrative Law Judge William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its president T. H. VanRyck. Respondent appeared by its attorney Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 testimony heard and exhibits examined, the Pollution Control Hearings  
3 Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
7 a certified copy of its Regulation I containing respondents  
8 regulations and amendments thereto, of which official notice is taken.

##### 9 II

10 The Barthel Company, Inc., (appellant) is located within the Port  
11 of Tacoma and manufactures chemical processing equipment consisting  
12 mainly of pipes and tanks. Its plant contains an oil-fired boiler  
13 used to heat the premises.

##### 14 III

15 The parties stipulate, and we find, that on October 27, 1981, the  
16 appellant caused black emissions from its boiler stack of an opacity  
17 ranging from 25-55 percent for 10 3/4 minutes of an observation  
18 lasting 20 consecutive minutes. Appellant received a Notice and Order  
19 of Civil Penalty from respondent (PSAPCA) assessing a \$250 civil  
20 penalty for the alleged violation of Section 9.03(b) of PSAPCA's  
21 Regulation I.

##### 22 IV

23 Appellant contends that the emissions were a result of impure fuel  
24 oil delivered to its fuel tanks without notice of the delivery. The  
25 delivery occurred on October 21, 1981 (a Wednesday) four week days  
26

1 prior to the emission in question. Appellant further contends that it  
2 routinely receives impure fuel oil which will cause violative  
3 emissions unless the boiler's filters are cleaned coincident with each  
4 delivery. Despite this, appellant has neither made firm arrangements  
5 with its oil supplier to be notified of oil deliveries nor  
6 investigated the possibility of changing oil suppliers.

7 V

8 Appellant has been assessed civil penalties for similar emissions  
9 from the same source on the following prior occasions with the  
10 following disposition:

- 11 1. \$50 for January 10, 1973: Paid
- 12 2. \$150 for September 21, 1973: Affirmed on appeal to this  
13 Board, PCHB No. 528.
- 14 3. \$250 for January 9, 1974: Affirmed on appeal to this Board,  
15 but one-half suspended for one year, PCHB No. 522.
- 16 4. \$250 for December 8, 1980: Affirmed on appeal by consent  
17 order suspending one-half for two years, PCHB No. 81-12.
- 18 5. \$250 for January 15, 1981: Affirmed on appeal by consent  
19 order suspending one-half for two years, PCHB No. 81-14.

20 VI

21 Any Conclusion of Law which should be deemed a Finding of Fact is  
22 hereby adopted as such.

23 From these Findings the Board comes to these  
24  
25  
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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 81-173

1 CONCLUSIONS OF LAW

2 I

3 Respondent PSAPCA'S Section 9.03(b) of Regulation I provides:

4 (b) After July 1, 1975, it shall be unlawful for  
5 any person to cause or allow the emission of any air  
6 contaminant for a period or periods aggregating more  
than three (3) minutes in any one hour which is:

7 (1) Darker in shade than that designated as  
No. 1 (20% density) on the Ringelman Chart, as  
published by the United States Bureau of Mines; or

8 (2) Of such opacity as to obscure an  
9 observer's view to a degree equal to or greater than  
10 does smoke described in Subsection 9.03(b)(1);  
11 provided that, 9.03(b)(2) shall not apply to fuel  
burning equipment utilizing wood residue when the  
particulate emission from such equipment is not  
greater than 0.05 grain per standard cubic foot.

12 Appellant caused the emission of an air contaminant in excess of the  
13 above limits and violated Section 9.03(b).

14 II

15 The amount of penalty is authorized by PSAPCA's Section 3.29 of  
16 Regulation I, and is fully justified.

17 III

18 Any Finding of Fact which should be deemed a Conclusion of Law is  
19 hereby adopted as such.

20 From these Conclusions the Board enters this  
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ORDER

The violation and \$250 civil penalty are each hereby affirmed.

DONE at Lacey, Washington, this 22<sup>nd</sup> day of April, 1982.

POLLUTION CONTROL HEARINGS BOARD

*David Akana*

DAVID AKANA, Lawyer Member

*Gayle Rothrock*

GAYLE ROTHROCK, Vice Chairman

*William A. Harrison*

WILLIAM A. HARRISON

Administrative Law Judge